

1
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE
Writ Petition No.4869 of 2006

Smt.Devayani Devanand Khavanikar
Vs.
Anant Mahadeo Koyande & ors.

Petitioner

Respondents

Mr.V.S.Paradkar with Ms.Swati Paradkar for
petitioner.
Mr.A.S.Khandeparkar for Resp.No.1.

CORAM: B.H.MARLAPALLE,J.

July 31, 2006.

P.C.

. Heard the learned counsel for the respective parties. R.C.S. No.58 of 2005 filed by the present petitioner before the learned Civil Judge Junior Division at Deogad mainly pertains to the issue of right of way to the land claimed to be owned by the plaintiff and described in para 1 of the plaint. The trial Court by allowing the application at Exhibit 5 for temporary injunction recorded a prima facie finding that such a right existed. However, when the defendant no.1 filed Civil Misc. Appeal No. 66 of 2005, the learned District Judge Sindhudurg at Oras allowed the appeal by recording a finding prima facie that the existence of the way was disputed. The lower Appellate Court noted that there was no evidence at all on record to establish, prima facie, the existence of the disputed road, its use and enjoyment by the plaintiff or the defendant nos.2 to

6 since long or at any time. The lower Appellate Court also held that the lower Court was totally in error in holding that the suit was in existence and the plaintiff had claimed the right of using way by easement of necessity. Admittedly no Court Commissioner was appointed by the trial Court or by the lower Appellate Court at any time and the findings recorded by the lower Appellate Court did take into consideration the documents placed on record along with the plaint. Therefore, the findings recorded by the lower Appellate Court do not call for any interference and in any case it would be in the interest of both the parties that the trial of the suit is expedited.

. Hence the petition is rejected summarily and Regular Civil Suit No.58 of 2005 is directed to be heard and decided on its own merits, as expeditiously as possible and preferably within a period of one year from the receipt of writ of this Court. Writ to go forthwith.

(B.H.MARLAPALLE,J.)